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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 887

UNITED STATES RUBBER COMPANY, *Petitioner,*

v.

UNDERWATER STORAGE INC., *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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OPINIONS BELOW

The opinion of the Court of Appeals is reported at U.S. App. D.C. , F.2d. , 151 U.S.P.Q. 90, 156 N.Y. LAW J., Nov. 14, 1966, p. 1, 94 WASH. L. REP. 1721 (1966) and is reprinted herein as Appendix E. The opinion of the United States District Court for the District of Columbia is reported at 249 F. Supp. 235, 147 U.S.P.Q. 408 (1965) and is reprinted herein as Appendix D.

JURISDICTION

The judgment of the Court of Appeals was dated and entered on September 21, 1966. A timely petition for rehearing was denied on October 27, 1966. The jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. A statute of limitations applicable to tortious disclosure or use of another's trade secrets states that no action shall be brought after the expiration of three years from the time at which it accrues. *Query:* Where a trade secret owner learns that his secret has been misappropriated, used and destroyed by general publication and thereafter delays bringing any action against the tort-feasor for more than three years, is his entire right of action barred by the statute (as the District Court held) or, despite his inaction for more than three years after learning of the destruction of his trade secret, does his right of action persist forever with respect to uses by the tort-feasor occurring within three years of any future action he may bring (as the Court of Appeals held)?

2. The Court of Appeals reinstated plaintiff's complaint alleging (1) plaintiff's ownership of a trade secret, (2) the issuance to plaintiff of a United States patent covering the trade secret, (3) defendant's misappropriation, use and general publication of the secret before issuance of the patent and further use thereafter, and (4) praying for money damages and an injunction against defendant's further use of the former secret. *Query:* Is the plaintiff entitled to the injunctive relief prayed for after defendant's general publication of the secret since it is clear that

an adequate remedy is provided at law by way of money damages for the value of the destroyed trade secret and an injunction could not operate to retrieve the secret from the public's knowledge and thereby prevent irreparable injury, but could only have the purely punitive effect of removing defendant permanently as a competitor to the plaintiff and all others in the trade after the patent covering the trade secret has expired?

3. In *International News Service* v. *Associated Press,* 248 U.S. 215 (1918) this Court found that one who painstakingly gathers news does not absolutely lose, by publishing this news, all right to control the use which his competitors may make of the published news and issued an injunction to preserve the competitive positions of the parties as they existed prior to the wrongdoing with respect to each other and with respect to other competitors. *Query:* Is *International News Service* to be taken as authority for issuing an injunction against the wrongdoer in the case of misappropriation and publication of a trade secret where the effect of an injunction will not be to preserve the positions of the parties but will be to permanently disable the defendant as a competitor of the plaintiff and others in the trade?

4. The Court of Appeals for the District of Columbia Circuit has reversed the District Court to adopt a construction of the effect of the statute of limitations enacted by Congress upon actions for the tortious misappropriation of trade secrets whereunder actions for past wrongs, rather than being quieted by the passage of time, can forever be brought. The Court of Appeals acknowledges the absence of dispositive precedent from any jurisdiction for this construction, but relies upon an expression of public policy which it

finds by interpreting *International News Service* in a manner in direct conflict with the restrictive interpretation given to that case by other circuits. *Query:* Should not this court review this decision so fundamental to the nature of the rights in trade secrets, a burgeoning area of the law having already significant and constantly growing impact upon the commerce of the nation?

STATUTE INVOLVED

This case involves 77 Stat. 510 (1963), D. C. CODE, 1961 Ed. § 12-301 (Supp. III, 1964) which is set out in full herein in Appendix C. The relevant portion of this statute provides:

> . . . .[A]ctions for the following purposes may not be brought after the expiration of the period specified below from the time the right to maintain the action accrues:
>
> . . . (8) for which a limitation is not otherwise specially prescribed—3 years.

CONCISE STATEMENT OF THE CASE

In 1960 petitioner (defendant below), under a contract with the Office of Naval Research of the U.S. Navy, installed in the Gulf of Mexico an underwater oil storage facility capable of holding quantities of petroleum beneath the surface of the ocean until they are needed to fuel naval surface ships. Upon the conclusion of testing of this demonstration installation the petitioner, still pursuant to the terms of the contract, disassembled the same and prepared a written description of the facilities and of the results of the demonstration in a report which it submitted to the U.S. Navy and which the U.S. Navy published in

December, 1960 in a booklet entitled "Development of a 50,000 Gallon Submersible Fuel Cache" which was distributed to the general public.

On March 27, 1964 the respondent (plaintiff below) brought this action in the U.S. District Court for the District of Columbia under 28 U.S.C. § 1332 alleging that Dr. Harold G. Quase, its executive vice-president, had developed "certain systems, methods, technical know-how, and inventions relating to an underwater storage system for strategic materials", that Dr. Quase had assigned all of his rights thereto to plaintiff, and that "during various times beginning in 1958 defendant [had] wrongfully appropriated and utilized these . . . including use thereof in connection with the said Navy contract." (The entire complaint is set out herein in Appendix A.)

Dr. Quase has stated upon deposition that he obtained a copy of the said U.S. Navy report "practically a week after it came out", in January or February of 1961, and that he was convinced from a reading of this report that defendant was "infringing" his rights. (Relevant excerpts from the deposition of Dr. Quase are set out in the Joint Appendix, pp. 11-52, which is contained in the certified record.) In his deposition Dr. Quase also stated that, while he did not know how defendant had obtained his secrets, the only way in which defendant could have obtained them was through a third party who might have been a person or persons in the Office of Naval Research of the U.S. Navy to whom, Dr. Quase alleges, he entrusted his secret information in confidence. Plaintiff prayed for damages in the amount of five million dollars ($5,000,000) for this appropriation and utilization, a declaration that plaintiff is the owner of the

said systems, methods and inventions and a perpetual injunction against defendants for the use thereof.

Defendant answered by admitting that it had been a party to the said government contract but denying that it had ever wrongfully appropriated or used any technical know-how or trade secrets of the plaintiff or its assignor, Dr. Quase, and denying that any of its publications referred to any wrongfully acquired know-how or trade secrets. Defendant also pleaded the three year statute of limitations. (The Answer is set out herein in Appendix B.)

There is no dispute between the parties as to the fact that the applicable portion of the statute of limitations is the one which provides that actions may not be brought more than three years from the time that the right to maintain them accrues. (The statute, 77 Stat. 510 (1963), D. C. CODE, 1961 ED. § 12-301 (Supp. III, 1964) is set out in full herein in Appendix C.) Nor is there any suggestion that the statute had been tolled at any time.

The District Court granted summary judgment for defendant on the ground that the statute of limitations had run since plaintiff first learned of the alleged misappropriation, use and general publication of the secret.

On plaintiff's appeal, the Court of Appeals reversed, holding that although there was no dispositive precedent on the point plaintiff should on policy grounds recover for any use of the formerly secret information by defendant which could be proven to have occurred within the three years immediately preceding the bringing of the action. To defendant's argument that there can be no recovery for use of formerly secret informa-

tion more than three years after the destruction of the secret by its general publication, the Circuit Court answered:

> Insofar as appellee's argument extends to parties who are not misappropriators in the first instance, or possessors of the secret by virtue of learning it from the misappropriator(s) with knowledge that it was stolen, we believe this argument to have merit. However, the fault in appellee's reasoning lies in its applying as a test to its own actions the rights of appellant as against the public generally (*id est,* those who have acquired the secret after publication), instead of considering the rule which should obtain between the original possessor and the misappropriator or those who have received the secret from the misappropriator with knowledge of the wrongful appropriation. We do not believe that a misappropriator or his privies can "baptize" their wrongful actions by general publication of the secret. Nor do we believe that the fact of the destruction of the secret prevents the continued use by the misappropriator or his privies from being a continuing wrong *vis-a-vis* the original possessor of the secret. It is the continuing use of another's secret, wrongfully obtained, or used after knowledge that it has been wrongfully obtained, that makes the tort a continuing one. Once the secret is out, the rest of the world may well have a right to copy it at will; but this should not protect the misappropriator or his privies. Their gain is ill-gotten and the passage of time or publication to the rest of the world should not serve to cleanse their hands. See *International News Serv.* v. *Associated Press,* 248 U.S. 215, 239 (1918).

ARGUMENT

Operation of Statutes of Limitations Generally

In considering any decision determined on public policy grounds as to how a statute of limitations defense shall be applied to a cause of action, it is useful to keep in mind the well-known public policy to which the Congress addressed itself in enacting such a statute. It is indisputable that by their very nature, statutes of limitations inevitably work for the benefit of the wrongdoer *vis-à-vis* a party who fails to bring his action within the specified period after he is first able to do so. In this sense statute of limitations defenses always serve to "baptize" the wrongful act. However, the statute of limitations need not deprive a party suffering a wrong of his right to recover therefor. All it requires of him is that he bring his action within the time which the statute specifies after his cause of action has accrued. To determine the effect of the statute upon this particular cause of action it is therefore necessary first to determine what the essential elements of a cause of action for misappropriation of a trade secret are. When these are present, the cause of action must be said to have accrued.

The Nature of the Cause of Action for Tortious Misappropriation of a Trade Secret

It is beyond dispute that the owner of a trade secret will be protected in his interest in maintaining exclusivity of knowledge of his secret information and in preventing unauthorized use thereof. When another tortiously obtains knowledge of this secret and makes such unauthorized use thereof as falls short of its general publication, a cause of action for damages for the unauthorized use and for an injunction against

further use thereof by the tort-feasor, but most importantly for an injunction against general disclosure of the trade secret by the tort-feasor accrues to the owner of the secret.

General disclosure of the trade secret is the greatest wrong which can be committed against its owner inasmuch as this act destroys the secret. With this wrongful act a cause of action accrues to its owner to recover for the total past and prospective value of that secret, or, at the very least this cause of action must be said to accrue to the owner of the former secret at the time that he learns of its wrongful destruction.

After the tortious destruction of the trade secret its former owner no longer has any subsisting right against the violation of which the law can protect him. Therefore, no further causes of action can accrue as a result of uses of the formerly secret information after the secret has been destroyed by publication. In *Sachs* v. *Cluett, Peabody and Co.*, 265 App. Div. 497, 39 N.Y.S. 2d 853 (First Dept. 1943) *aff'd mem.* 291 N.Y. 772, 53 N.E. 2d 241 (1944) the expiration of the period defined by the statute of limitations following the wrongful taking and publication of a trade secret was held to bar any recovery, including that for uses made of the formerly secret information within the statutory period. The court observed:

> A continuing right may exist where there is an interference with but not destruction or conversion of property. [39 N.Y.S. 2d at 857]

This reasoning was explained with the following parable:

> If defendant hits plaintiff's horse repeatedly, plaintiff has a new cause of action upon each

> striking; but if defendant destroys plaintiff's horse, or takes it and claims it as his own, plaintiff's right accrues immediately and he must sue within the period of limitation measured from that date—or never. [39 N.Y.S. 2d at 857]

Tortiously acquiring knowledge of another's trade secret and using this secret in competition with the owner in such fashion as not to publish the secret is admittedly analogous to striking a blow at his horse. Each time a blow is struck, or each time the secret information is covertly used, a new cause of action for damages accrues to the owner. Except for the wrongdoer's knowledge of it, the secret remains intact and the court can fashion remedies against the wrongdoer which will restore the secret at full value to its owner.

When the tortious acquirer of the secret publishes it, however, he has in effect killed the horse and no order of the court can restore the secret to its former owner any more than it could bring the dead horse back to life. If the former owner does not bring his action to recover for the total value of the former secret or of the dead horse within the period permitted by the statute of limitations, he is barred from all recovery.

One of the most widely quoted statements as to the nature of the right in trade secrets which the law will protect is that made by Chief Justice William Howard Taft (when he was on the lower bench) in *Cincinnati Bell Foundry Co.* v. *Dodds,* 19 Weekly Law Bulletin 84 (Ohio 1887):

> The property in a secret process is the power to make use of it to the exclusion of the world. If the world knows the process then the property

> disappears. There can be no property in a process and no right of protection if knowledge of it is common to the world.

A more modern view of this right, expressed in RESTATEMENT, TORTS § 757 (1939) Comment a, (this section with comments is set out in its entirety herein in Appendix F.) avoids calling this right a property right but also stresses that the secret status of the information is the subject of legal protection against one who acquires it by unlawful means:

> The protection afforded by the rule stated in this Section is in some respects greater and in some respects less than that afforded by the patent law. It is greater in that it is not limited to a fixed number of years and does not require novelty and invention as in the case of patents (see Comment b). It is less in that *secrecy of the process* and impropriety in the method of procuring the secret *are requisite* here but not in the case of patents. [Emphasis added.]

The applicable portion of the black letter rule of this Section is:

> One who discloses or uses another's trade secret, without a privilege to do so, is liable to the other *if*
>
> (a) *he discovered the secret by improper means,* . . . [Emphasis added.]

The only proper inference to be drawn from this proposition on which the authorities so uniformly agree, namely that the protectable interest which a trade secret owner enjoys is the maintenance of the status of secrecy, is that no protectable interest survives the termination of the secret status. Therefore, the exclusive remedy for the tortious acquisition of a

trade secret and its wrongful destruction by the tort-feasor's general publication must be an action to recover from the tort-feasor for the entire value of the secret. This is so regardless of whether the tort-feasor has used the secret and whether such use is before or after the destruction. It works no untoward hardship upon the victim of this wrongful appropriation to require of him, as of the victims of all other tortious acts, to bring his action to recover for this wrong within the period defined by the statute of limitations from the time of the occurrence of that act.[1]

It is important in this context to distinguish the legal status of members of the general public who may engage in purely tortious conduct with respect to another's trade secret from the special legal status of those who have removed themselves from the general public by entering into a contractual relationship, either express or implied, with the trade secret owner. The tort-feasor is answerable for his conduct in acquiring the secret by improper means in an action brought within the appropriate statutory period after completion of the tort.

One liable to another under contract, however, does not learn of the secret by unlawful appropriation. He receives knowledge of the secret lawfully from its owner under the terms of a contract, and is therefore bound by all of the contractual duties which he assumes. These duties generally include keeping the secret in confidence and compensating the owner for

[1] It will be noted that plaintiff has pleaded (Complaint, paragraph 3, Appendix A) that he has obtained a patent on the trade secret involved herein. Thus the rule contended for herein has less impact upon plaintiff in this action than upon one who relies solely upon his rights under the law of trade secrets.

its use. He is answerable for each breach of his contractual duties which has occurred within the statutory period preceding the bringing of the action, and his liability for use of the secret may well survive the publication of the secret if he has agreed to do so in consideration for being made privy to the secret. The subsisting right upon which the owner of the trade secret relies in such a case is his right under the contract (which may well survive publication of the secret) rather than upon his right to maintain the secret status of his information (which, as has been said, is irresurrectably destroyed by publication).

The "Fraud Cases" Exception to the General Application of Statutes of Limitations

The only exception recognized in the law to the general rule as to the operation of the statute of limitations on actions to recover for tortious acts is where the very nature of the wrongful act may serve to conceal from the victim that a wrong is being perpetrated upon him. Such a situation is not uncommon in fraud cases. However, the only modification to the general operation of the statute of limitations which the law makes in such cases is to hold that the cause of action accrues (and therefore that the statutory period begins to run) when the victim of the wrongdoing discovers the wrong. No greater exception to the general rule would seem necessary to protect trade secret owners from covert invasions of their rights.

Plaintiff has admitted gaining actual knowledge of the alleged misappropriation from him of the secret and of its publication more than three years before the bringing of his action. Thus, plaintiff admits to letting the statutory period following his learning of all of the operative facts of the alleged tort perpetrated upon him expire before bringing this action.

The Remedy Created by the Court of Appeals in This Case

The Court of Appeals has taken the position that permitting one who misappropriates and publishes a trade secret, after the expiration of the statutory period from these wrongful acts, to use without incurring liability thereby the formerly secret information would be permitting him to "baptize" his wrongful action in misappropriating the secret by the second wrongful action of publishing it. This position totally ignores the fact that, far from being a "baptism", the act of publication is a tort calling down upon the wrongdoer the wrath of an action to recover for the total value of the secret. The former owner of the secret is only required, at least insofar as he seeks redress from temporal authority, to bring this action in timely fashion. There is no basis in logic, and no analogous situation in any area of the law which would justify imposing eternal damnation upon the former wrongdoer in the form of a perpetual liability for use of the information formerly embraced by the trade secret. Under the rule pronounced by the Court of Appeals in this case defendant remains subject to liability for any use which he may make of this information, even one hundred years from now. Thus he must refrain from competing not only with plaintiff who allegedly originated this information, but also with the rest of the public who clearly now enjoy the right to make full use of this information subject only to plaintiff's patent right.

If such liability exists, what is its extent? What measure of damages is to be applied to any post-publication use of the formerly secret information which plaintiff can prove defendant to have made? His right to recover for the total value of the secret

as a result of its wrongful destruction by publication is barred by the statute of limitations. Is that right of action to be barred only to permit the recovery which plaintiff could have gotten under it had he brought it in timely fashion to survive by allowing him to recover its value in actions for post-publication uses of the information?[2]

It is to be emphasized that, under the rationale of the Court of Appeals, actions to recover for post-publication uses made of the formerly secret information by those privy to its wrongful publication would seem to lie even where the former owner *had* brought a timely action to recover for the total value of the secret after its publication. For the wrongdoer in such a situation is as much the holder of an ill-gotten gain as the wrongdoer in the instant case, and "the passage of time or publication to the rest of the world should not serve to cleanse their hands" any more than it should here. Or is the rule to be that where a plaintiff, after his secret has been destroyed by wrongful publication, brings a timely action to recover for the total value of the secret this recovery will be his full compensation, but where he fails to bring such an action in timely fashion the liability defined in this case by the Court of Appeals shall subsist and permit him to make his recovery by way of damages for post-publication uses of the formerly secret information? The operation of the law can not be enhanced by circumventing the policy served by the statute of limitations with the creation of special causes of action solely

[2] In view of plaintiff's exclusive right for a limited time under his patent and his perpetual exclusive right against defendant as created by the Court of Appeals, plaintiff would appear to have an opportunity for multiple recovery for a single use by defendant.

for the purpose of compensating those who have permitted the passage of time to bar their regularly recognized remedies.

The Court of Appeals' Reliance Upon the International News Service Case

The Court of Appeals expressly pointed out that it had found no dispositive precedent for the novel cause of action which it fashioned in order to reverse the summary judgment for defendant entered by the District Court. For a prior expression of the public policy which the Court of Appeals sought to serve, it refers us to *International News Service* v. *Associated Press,* 248 U.S. 215 (1918).

A consideration of the *International News Service* case, however, reveals a number of crucial distinctions between it and the instant case. First of all, the activity which the plaintiff there sought to enjoin was future misappropriations of his news by the defendant, not the further use of material already wrongfully taken. Certainly the case did not involve the use of material over three years after (or more than the statutory period after) it had been published.

Secondly, the plaintiff in *International News Service* sought a remedy which would place the defendant on the same footing as plaintiff's other competitors in the news distribution field. It sought (and obtained) an order requiring the defendant to expend an effort comparable to that of its competitors in order to obtain *in the future* the news which it intended to furnish to its customers. Thus it prevented the reaping of "the harvest of those who have not sown." In this case, on the other hand, plaintiff seeks relief which would disable the defendant from, or at least place him at a serious disadvantage in, competing with the other

members of his trade in the use of publicly available information.[8]

Thirdly, the rule of *International News Service* was fashioned for a very special circumstance which could not be more remote from the one at bar. The plaintiff in *International News Service* dealt in a commodity the sole value of which lay in its prompt publication. The sole value in a trade secret, on the other hand, lies in its owner's ability to keep it secret. It would be a complete contradiction of the nature of trade secret protection to suggest that exclusive rights to a trade secret can survive its publication.

In order to fashion the remedy granted in *International News Service,* this Court first had to establish that the plaintiff had an interest which survived his act of publishing his news:

> The contention that the news is abandoned to the public for all purposes when published in the first newspaper is untenable. Abandonment is a question of intent, and the entire organization of the Associated Press negatives such a purpose. The cost of the service would be prohibited if the reward were to be so limited. . . . Their effect is that publication by each member must be deemed not by any means an abandonment of the news to the world for any and all purposes, but *a publication for limited purposes.* [248 U.S. at 241-42, Emphasis added.]

Having found the publication which preceded the adverse use complained of to be a limited one, i.e. one

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[8] Subject to plaintiff's patent right which operates against all competitors alike for a limited time. Upon the expiration of that time, however, plaintiff will continue to enjoy a perpetual exclusive right against defendant. *Contra, Brulotte* v. *Thys Co.,* 279 U.S. 29 (1964), *Scott Paper Co.* v. *Marcalus Mfg. Co.,* 326 U.S. 249 (1945).

which did not destroy plaintiff's subsisting rights therein, this Court was then in a position to grant a remedy to protect those subsisting rights. Whatever the propriety of the majority's finding that the publication in *International News Service* was but a limited one, there can be no question but that the tortious publication which plaintiff admits to have occurred (in the instant case) was a general one, irrevocably ending all of plaintiff's rights to the published material.

The fact that the rule laid down in *International News Service* is a special one, applicable only in closely analogous fact situations, has long been recognized. Thus where one sought to prevent pirates of silk designs from reaping where they had not sown, Judge L. Hand in *Cheney Bros.* v. *Doris Silk Corp.*, 35 F.2d 279, 280 (2d Cir. 1929) *cert. denied* 281 U.S. 728 (1930) stated:

> Of the cases on which the plaintiff relies, the chief is International News Service v. Associated Press, 248 U.S. 215, 39 S. Ct. 68, 63 L. Ed. 211, 2 A.L.R. 293. Although that concerned another subject-matter—printed news dispatches—we agree that, if it meant to lay down a general doctrine, it would cover this case; at least, the language of the majority opinion goes so far. We do not believe that it did. While it is of course true that law ordinarily speaks in general terms, there are cases where the occasion is at once the justification for, and the limit of, what is decided. This appears to us such an instance; we think that no more was covered than situations substantially similar to those then at bar. The difficulties of understanding it otherwise are insuperable. We are to suppose that the court meant to create a sort of common-law patent or copyright for reasons of justice. Either would flagrantly conflict with the scheme which Congress has for more than a century devised to cover the subject-matter.

This distinction drawn by the Second Circuit has been recognized by this Court in *Reichenfelder* v. *Quinn*, 287 U.S. 315, 319 (1932):

> Beyond the traditional boundaries of the common law, only some imperative justification in policy will lead the courts to recognize in old values new property rights. Compare *International News Service* v. *Associated Press* . . . with *Cheney Bros.* v. *Doris Silk Corp.* . . . .

Taking *International News Service* as the basis for the creation of a permanent liability for use of information which was once embraced by a trade secret but which has since entered the public domain (subject to the patent right) represents a very sharp departure from the construction which *International News Service* has uniformly received since 1918 and is an innovation of very questionable desirability in the law.

The Court of Appeals' Decision Conflicts With the Established Maxims of Equity

Reversal of the summary judgment for defendant appears to place plaintiff in a position to recover on his prayer for a perpetual injunction against plaintiff's use of the subject matter of the former trade secret. As has been pointed out herein, the one whose trade secret is misappropriated from him and destroyed by general publication has an adequate remedy at law in the form of money damages for the total value of the secret, provided only that he pursues it seasonably. Furthermore, inasmuch as the rest of the world already has access to this formerly secret information, further use of it by defendant does not pose the threat of irreparable injury to the plaintiff by terminating the secret status of that information. Also the rest of the world is now free to compete with plaintiff in the use of this information so that it can-

not be said that plaintiff would be irreparably injured by defendant's competition with him in the use of this information. Thus if there is any liability for the use of this now published information, it is clearly such liability as for which there is an adequate legal remedy in the form of damages. The issuance of an injunction in such a situation constitutes the use of the injunctive powers of a court solely for the purpose of punishing a wrongdoer—a use clearly contrary to the generally accepted principles of equity.

Yet this misapplication of the principles of equity is no less glaring than the underlying reason expressed by the Court of Appeals for reversing this judgment, namely to avoid permitting the passage of time or publication to the rest of the world to serve to cleanse defendant's hands. The doctrine of unclean hands is a longstanding defense against one who seeks equitable relief. That is, a condition precedent to obtaining the forms of relief which only equity can provide is that the party seeking this relief have "clean hands" with regard to the transaction at issue. It is a requirement made of plaintiffs. It is not proper to fashion extraordinary sanctions to be imposed upon defendant, as the Court of Appeals has here done, because he has unclean hands.

SUMMARY

The Court of Appeals has, without precedent therefor, fashioned a form of liability in trade secret cases under which the user of any published information is forever liable to an action by one who would seek to establish that the information once constituted his trade secret and was tortiously acquired from him by the user.

This holding stems from a balancing by the court of the policy underlying the statute of limitations with

the policy of preventing tort-feasors from benefitting from their wrongdoing in a fashion which badly undervalues the former and results in reducing competition.

As justification for this departure, the Court of Appeals relies upon this Court's decision in *International News Service* even though that case is totally inapposite to the instant one and even though such an interpretation of that case is widely at variance to the interpretation which the other circuits have given to the case since it was decided in 1918.

This extraordinary form of liability is totally unnecessary, inasmuch as the right to bring a timely action for the total value of a trade secret after its tortious publication is a fully adequate remedy at law for the former owner of the trade secret. The timeliness of such an action is measured by the statutory period following the wrongful publication. Should the former owner be unaware of the wrong committed against him, he certainly requires no greater protection against the operation of the statute of limitations than that which must suffice the victim of a covert fraud, namely to initiate the running of the statutory period at the time of plaintiff's discovery of the wrong.

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